he brought a second action for damages accrued since the first trial. *Held*, that the former judgment is no bar to recovery. *Canada-Atlantic & Plant S. S. Co.* v. *Flanders*, 165 Fed. 321 (C. C. A., First Circ.).

The main case apparently marks the first appearance of the doctrine of "constructive service" in the federal courts. It is to be regretted that after the repudiation of this doctrine in England and in the majority of our states another case should be added to the few in its support. For a discussion of the principles involved, see 14 HARV. L. REV. 294; 12 *ibid.* 435. Confusion seems to have arisen in treating the case as one of anticipatory breach.

DANGEROUS PREMISES — LIABILITY TO TRESPASSERS — CHILD TRESPASSER ON TURNTABLE. — The plaintiff, a boy of four or five years, entered the defendant's premises through a gap in its boundary hedge. While playing with companions on the defendant's turntable, which was not fastened, the plaintiff was injured. The jury found that the hedge was in a defective condition through the defendant's neglect. *Held*, that the defendant is liable. *Cooke* v. *Midland Great Western Railway*, 53 Sol. J. & Wkly. Rep. 319 (Eng., H. L., March 1, 1909).

This decision reverses that of the lower court, commented upon in 21 HARV. L. REV. 57. The case is noteworthy as being the first turntable case in the English courts, and as committing them to the rule of the weight of American cases — a result perhaps not to be expected. Though the report is rather meager, it would seem that the House of Lords has adopted without demur the fiction of "implied invitation," "allurement," and "attractive premises."

ESTOPPEL — ESTOPPEL IN PAIS — ACKNOWLEDGMENT OF LIABILITY ON CERTIFICATE OF DEPOSIT. — The defendant bank issued a non-negotiable certificate of deposit to A, who assigned to B, who assigned to the plaintiff. Later, the defendant told B that the certificate would be paid. On suit brought, the defendant claimed a banker's lien to satisfy claims against A. *Held*, that since the defendant would be estopped to deny its liability as against B, it is estopped in this suit in order to avoid circuity of action. *Old National Bank* v. *Exchange National Bank*, 26 Banking L. J. 119 (Wash., Sup. Ct., Sept. 24, 1908).

To raise an estoppel by misrepresentation there must be a misstatement of past or existing facts. A mere statement of intention is not enough. *Chadwick* v. *Manning*, [1896] A. C. 231; *Langdon* v. *Doud*, 10 Allen (Mass.) 433. Many instances where this rule is seemingly disregarded are in reality cases rather of contractual obligation than of pure estoppel. See *Coles* v. *Pilkington*, L. R. 19 Eq. 174, 177; EWART, ESTOPPEL BY MISREPRESENTATION, 69. The defendant bank's statement that it would pay the certificate is a mere statement of intention which is not binding in the absence of consideration. Moreover, in all cases, the one claiming the estoppel must have relied on the misrepresentation to his damage. *Simm* v. *Anglo-American Telegraph Co.*, 5 Q. B. D. 188, 211. So, where the maker of a promissory note makes an assertion to one who has already purchased it, that he has no existing defense against the note, he is not thereafter estopped from setting up such a defense, since no damage has been suffered in reliance on the assertion. *Windle* v. *Canaday*, 21 Ind. 248; *First National Bank* v. *Chaffin*, 118 Ala. 246. Hence the defendant in the principal case should not be estopped as against B, and *a fortiori* there should be no estoppel as against the plaintiff to whom no representation whatever was made.

FEDERAL COURTS — JURISDICTION BASED ON NATURE OF SUBJECT MATTER — JOINT ACTION INVOLVING FEDERAL QUESTION. — A joint action was brought against a railway company, its engineer, and fireman, for causing the death of the plaintiff's husband. The company had been created by Act of Congress, while the co-defendants and the plaintiff were citizens of a single state. Application was made for a remission of the case from the federal to the state court. *Held*, that as a federal question is involved, the federal court has jurisdiction. *Matter of Dunn*, 212 U. S. 374.

Diversity of citizenship is a ground for federal jurisdiction under the statute for removal of causes. See ACT OF MARCH 3, 1887, § 1. But by judicial construction, all the defendants in a joint action must be citizens of states other than that of the plaintiff. *Alabama Great Southern Railway Co.* v. *Thompson*, 200 U. S. 206. Also, a case arising under the laws of the United States may be removed to a federal court; and a suit brought against a corporation created by Act of Congress, presents such a case. *Texas & Pacific Railway Co.* v. *Cody*, 166 U. S. 606. But if the same construction were put upon this ground for removal as upon the former, the presence of co-defendants who have no right to federal jurisdiction should prevent removal. But since the present joint action arises under the laws of the United States as to one defendant, the court holds that the whole case is permeated with a federal character. This is a logical interpretation of the language of the act in question; and it was correctly admitted that the action, brought in joint form, could not be separated by one defendant. *Alabama Great Southern Railway Co.* v. *Thompson, supra.* And in any case removal to the federal court must be under petition of all the defendants. *Chicago & Rock Island Ry. Co.* v. *Martin*, 178 U. S. 245.

GIFTS — GIFTS CAUSA MORTIS — PRESUMPTION OF UNDUE INFLUENCE FROM CONFIDENTIAL RELATIONS. — A gift *causa mortis* was made to a priest whose relations with the donor had been confidential. *Held*, that the gift is *prima facie* void. *Gilmore* v. *Lee*, 41 Chic. Leg. N. 217 (Ill., Sup. Ct., Dec. 15, 1908).

The existence of confidential relations between the parties to a gift *inter vivos* raises a presumption of undue influence. *Huguenin* v. *Basely*, 14 Ves. 273. But this doctrine is not applied to testamentary gifts. *Tyson* v. *Tyson*. 37 Md. 567, 583. See 14 HARV. L. REV. 73. One reason given for this distinction is that a testator is not impoverished by a bequest, and therefore may be legitimately influenced by considerations arising out of confidential relations. *Bancroft* v. *Otis*, 91 Ala. 279. See *Sparks' Case*, 63 N. J. Eq. 242, 248. On this reasoning a gift *causa mortis* should be treated like a will. But another explanation is that a greater degree of undue influence may reasonably be presumed in gifts than in wills, because one present and taking part in a transaction is better able to exercise coercion. *Haydock* v. *Haydock*, 34 N. J. Eq. 570; *Archer* v. *Hudson*, 7 Beav. 551. This explanation is supported by the strong tendency to apply to a will the presumption of undue influence when the legatee was active in procuring its execution. *Dale's Appeal*, 57 Conn. 127; *Sparks' Case, supra.* Furthermore a will is revocable, while a gift *inter vivos* is a finality. Failure to revoke a will indicates a continued assent and thus destroys the presumption. See *Miskey's Appeal*, 107 Pa. St. 611, 629. But a gift *causa mortis*, being made *in extremis*, is in fact practically beyond the donor's control. Hence there is no ground for distinguishing gifts *causa mortis* from gifts *inter vivos*. See *Thompson* v. *Heffernan*, 4 Dr. & War. 285.

INSURANCE — NATURE AND INCIDENTS OF INSURANCE CONTRACTS — RIGHT OF HOLDER OF LIEN TO INSURANCE MONEY. — A had a lien on lumber for sawing it from logs delivered to him by B. B had taken out a policy of insurance on the lumber payable to C, who had lent money on the security of the lumber. The lumber was burned. *Held*, that A has a lien upon the insurance money. *Chew* v. *Caswell*, 13 Ont. Wkly. Rep. 548 (Ont., Feb. 17, 1909).

A policy of fire insurance is a personal contract for the benefit of the assured and does not run with the property. *Quarles* v. *Clayton*, 87 Tenn. 308. So a mortgagee, as such, has no more right than any other creditor to the proceeds of a policy on the mortgaged premises for the benefit of the mortgagor, or of some other party having an insurable interest therein. *Columbia Insurance Co.* v. *Lawrence*, 10 Pet. (U. S.) 507. Unless there is an actual assignment of the policy to him, he can acquire a right only by contract with the assured. *Nichols* v. *Baxter*, 5 R. I. 491; *Nordyke & Marmon* v. *Gery*, 112 Ind. 535. The same rules apply to the holder of a mechanic's lien. *Galyon* v. *Ketchen*,